

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CHARLES ELVIS RABY	§	
VS.	§	CIVIL ACTION NO. 1:09-CV-868
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

Petitioner Charles Elvis Raby, a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the petition as a successive petition, filed without authorization from the United States Court of Appeals for the Fifth Circuit.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties. Petitioner does not deny that this is a successive petition, but he requests the court to stay this proceeding while he seeks authorization from the Fifth Circuit. Because petitioner should have sought leave from the Fifth Circuit before filing this petition, the motion will be denied.

O R D E R

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. Petitioner's motion to stay the proceeding is

**DENIED.** A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

**SIGNED** this the **3** day of **December, 2009**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield  
United States District Judge